

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

DAWN MELISSA DAIGRE

PLAINTIFF

VS.

CIVIL ACTION NO.: 1:10-cv-00568(LG)(RHW)

**CITY OF WAVELAND, MISSISSIPPI, A
MUNICIPAL CORPORATION, CHIEF JAMES
A. VARNELL, OFFICER HENRY BOUGANIM,
SERGEANT CLAY NECAISE, OFFICER
CHRISTOPHER ALLEN, AND OFFICER
JOSHUA POYADOU, INDIVIDUALLY AND IN
THEIR OFFICIAL CAPACITIES AS POLICE
OFFICERS WITH THE CITY OF
WAVELAND, MISSISSIPPI**

DEFENDANTS

DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO AMEND ANSWER

The Defendants, the City of Waveland, Mississippi, James A. Varnell, Henry Bouganim, Clay Necaie, Christopher Allen, and Joshua Poyadou, (collectively, the "Municipal Defendants"), by and through their undersigned counsel, and respectfully request leave of the Court to amend its Answer and Affirmative Defenses pursuant to FED. R. CIV. P. 15 to assert an additional affirmative defense to Plaintiff's claims in the above-styled matter, and would show as follows:

1. In light of information obtained subsequent to the filing of Defendants' original Answer and Affirmative Defenses and that was not available prior to the filing of the Answer and Affirmative Defenses, Defendants respectfully request leave to assert an additional affirmative defense.

2. Pursuant to this Court's Case Management Order, amended pleadings were to be filed by March 22, 2011. However, in the course of preparing answers to Plaintiff's initial

written discovery, Defendant's counsel discovered information that may support a collateral estoppel defense under the Supreme Court's decision in *Heck v. Humphrey*, 512 U.S. 477 (1994). Plaintiff will not be prejudiced by this amendment, as no depositions have been taken yet and approximately three months remain before the discovery deadline of September 1, 2011.

2. A copy of Defendants' proposed First Amended Answer and Affirmative Defenses to Plaintiff's Amended Complaint is attached as Exhibit "A".

3. Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend "shall be freely given when justice so requires" and "evinces a bias in favor of granting leave to amend." *Dussouy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 598 (5th Cir. 1981). Further, where—as here—an amendment is solely for the purpose of adding an affirmative defense, it should be permitted so long as it is "raised at a pragmatically sufficient time, and [the plaintiff is] not prejudiced in its ability to respond." *Giles v. General Elec. Co.*, 245 F.3d 474, 493 (5th Cir. 2001). As noted above, Plaintiff will have ample time to conduct discovery on this defense, and consequently will not be unduly prejudiced by it.

4. Defendant's have consulted with Plaintiff's Counsel, and they do not object to this request. Considering the nature of this Motion, Defendants request the Court waive the requirement that a separate memorandum in support be submitted herewith.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request leave of Court to amend its Answer and Affirmative Defenses.

THIS, the 2nd day of June, 2011.

Respectfully submitted,

PHELPS DUNBAR, LLP

BY: /s/W. Brett Harvey

Gary E. Friedman, MS Bar No. 5532
W. Brett Harvey, MS Bar No. 102440
4270 I-55 North

Jackson, Mississippi 39211

Telephone: (601) 352-2300

Telecopier: (601) 360-9777

Email: friedmag@phelps.com

brett.harvey@phelps.com

**ATTORNEYS FOR MUNICIPAL
DEFENDANTS**

CERTIFICATE OF SERVICE

I, W. BRETT HARVEY, do hereby certify that I have this date electronically filed the foregoing *MOTION* with the Clerk of the Court using the CM/ECF system which sent notification of such filing to:

Brian Bienvenu Alexander, Esq.
Alexander & Alexander, P.C.
220 Bookter Street
Bay St. Louis, Mississippi 39520
Telephone: (228) 342-8429
brianalexander@bellsouth.net

John Christopher Alexander, Sr., Esquire
3751 Government Street, Suite "A"
Baton Rouge, LA 70806
(225) 761-9456
jca@jcalaw.us

ATTORNEYS FOR PLAINTIFF

THIS, the 2nd day of June 2011.

/s/ W. Brett Harvey
W. BRETT HARVEY

